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ON

April 23, 2008

Mark B. Quatt Registration No. 30,484

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Palumbo Atty. Docket No: D-43568-01  
Serial No.: 10/529,379 Group Art Unit: 3654  
Filing Date: March 28, 2005 Examiner: Kim, Sang K.  
Title: Apparatus and Method for Loading a Bag Train

APPEAL BRIEF

Commissioner for Patents  
Alexandria, VA 22313-1450

Dear Sir:

This Appeal Brief is being filed in support of a Notice of Appeal filed on February 25, 2008.

The Commissioner is authorized to charge the fee of \$510 for filing an Appeal Brief, and any additional fees that may be required or credit any overpayment, to Deposit Account No. 07-1765.

Respectfully submitted,

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date

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**Real Party in Interest**

The real party in interest in this patent application is Cryovac, Inc.

**Related Appeals and Interferences**

There are no other appeals or interferences known to applicant, the applicant's legal representative, or assignee that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**Status of Claims**

The claims now on appeal are claims 1 to 7, and 10.

Original claims 1 to 10 were rejected in an Office Action mailed June 1, 2007.

By amendment of October 4, 2007, claims 1, 3, 4, 6, 7, and 10 were amended, and claims 8 and 9 were canceled.

Claims 1 to 7, and 10, were rejected in a Final Office Action mailed November 23, 2007.

Applicant thereafter filed an Amendment after Final on December 10, 2007, amending claim 5 to remove a § 112 rejection of that claim.

In an Advisory Action Before the Filing of an Appeal Brief, mailed December 27, 2007, the amendment was entered.

Applicant thereafter filed a Notice of Appeal on February 25, 2008.

A copy of the claims presently on appeal appears in the Claims Appendix.

**Status of Amendments**

The claims now on appeal are claims 1 to 7, and 10.

With respect to all but claim 5, these are the same claims that were rejected in the Final Office Action mailed November 23, 2007.

Applicant filed an Amendment after Final on December 10, 2007, amending claim 5 to remove a § 112 rejection of that claim.

In an Advisory Action Before the Filing of an Appeal Brief, mailed December 27, 2007, the amendment was entered.

A copy of the claims presently on appeal appears in the Claims Appendix.

### **Summary of Claimed Subject Matter**

#### **Concise Explanation of the subject matter of independent claim 1**

1. An apparatus for taking up a succession of imbricated packaging bags (51a, 51b, 51c) carried by a pair of carrier tapes (52a, 52b), said apparatus comprising:
  - a) two carrier tape winding spools (12a, 12b) positioned coaxially with one another; and
  - b) a differential gear unit (20) positioned between said spools, said differential gear unit adapted to be, in use, removably connectable to a shaft (112) of a bag loader (100) whereby two carrier tapes can be wound up on said spools with equal tension. (page 1, line 28 to page 2, line 2).

#### **Concise Explanation of the subject matter of independent claim 10**

10. A method of loading a bag train on a bag loader, comprising:
  - a) providing a bag train incorporating a succession of imbricated packaging bags (51a, 51b, 51c) on two supply tapes (52a, 52b) from which they are to be removed during the loading operation, the supply tapes having lead ends equipped with two tape-winding spools (12a, 12b) with a differential gear unit (20) positioned coaxially between the spools;
  - b) removably connecting the differential gear unit (20) to a shaft (112) of said bag loader (100); and
  - c) driving said spools (12a, 12b) to wind up said tapes (52a, 52b) on said spools with equal tension to bring each of the imbricated bags (51a, 51b, 51c) successively to a loading position where each bag is loaded and separated from the tapes. (page 2, lines 19 to 26).

**Grounds of Rejection to be reviewed on appeal**

The grounds of rejection to be reviewed on appeal (per the Office Action mailed November 23, 2007) is as follows:

1. Claims 1 to 7, and 10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over O'Neill, US Patent No. 4796412 in view of GB 2064477A.

### **Argument**

**Claims 1 to 7, and 10 are patentable under 35 U.S.C. §103(a) and not rendered obvious by O'Neill, US Patent No. 4796412 in view of GB 2064477A.**

It will be noted that GB 2064477A teaches a differential gear that is permanently attached to, and forms an integral part of, the machine. In contrast, independent apparatus Claim 1 of the present application is directed to a differential gear unit positioned between two carrier tape winding spools, the differential gear unit adapted to be, in use, *removably* connectable to a shaft of a bag loader whereby two carrier tapes can be wound up on said spools with equal tension. Likewise, independent method Claim 10 of the present application is directed to a method of loading a bag train on a bag loader, including the step of *removably* connecting a differential gear unit to a shaft of said bag loader. To be sure, O'Neill shows the spools can be removably connected to the bag loader, but not the differential drive mechanism.

Also, in GB 2064477A, in order to attach bags, two spools must be attached to two separate shafts of the bag loader. Likewise, the two spools 8 and 9 of O'Neill must be attached to two separate drive dogs 11 and 12 respectively of the drive unit 13. In the present invention, only one component needs to be fitted onto a single shaft of the bag loader.

With respect to dependent claims 2 to 7, applicant relies on the above comments.

Additionally, with respect to claim 2, the Office Action does not identify, in either reference, an apparatus as recited in claim 1, wherein said spools each have a recess in a surface which faces the other spool and wherein said differential gear unit is positioned in said recesses.

Additionally, with respect to claim 7, the Office Action does not identify, in either reference, an apparatus as recited in claim 1, wherein said

differential gear unit is removably connectable to said shaft without the use of tools.

In the Final Office Action mailed November 23, 2007, at the last paragraph of page 2 and first paragraph of page 3, it is stated that

Regarding claims 1, 3, 6, 7 and 10, O'Neill '412 discloses a method and an apparatus for taking up a succession of imbricated packaging bags 2a-c carried by a pair of carrier tapes 3, 4, two carrier tape winding spools 8, 9 positioned parallel with one another; and a differential gear unit 13 with a bevel gear 14 positioned outside the spools, said differential gear unit being adapted to removably connectable (i.e., gears can be disassembled by simply removing bolts and fasteners without the use of tools and using hands) to a shaft (shaft of 15) of a bag loader (no reference number assigned, near 15) whereby two carrier tapes can be wound up on said spools with equal tension, see the drawing, and column 3, lines 13-20.

This line of reasoning is summarized at page 5, first paragraph:

As stated above, the concept of removably connectable to a shaft of a bag loader is taught by disassembling the gears by removing the bolts and fasteners without the use of tools and using hands. Furthermore, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. In re Hutchison, 69 USPQ 138.

Applicant respectfully submits that this reasoning uses a very strained definition of the word "removably". It may be that virtually any

element of a multicomponent mechanical device may be ultimately "removable" if enough resources, energy and tools are brought to bear on that particular component. Applicant urges a more reasonable construction of that term, read in the light of the specification.

At page 3 of the specification, it is taught:

The end of the tapes 52a, 52b are positioned in a cassette 10. The cassette 10 is loaded by hand, without tools, on to a shaft 112 of the bag loader 100 so that the unit is adapted to be, in use, removably connectable to the shaft. The adaptation may be by way of a snap-on fitting, a butterfly nut, an over center buckle etc. Any way of attaching the unit by hand, without the use of tools, so that little time or skill is required can be used.

The inventive system is clearly adapted to make for easy installation and removal of cassettes 10 as they fill up with tapes from the bag train, and require replacement. Page 6 of the Office Action states that "the concept of removably connectable to the shaft of a bag loader is taught by dissembling the gears by removing the bolts and fasteners without the use of tools and using hands." Applicant submits that this statement is misleading, in that at first blush it appears to be drawn from one of the references. This does not appear to be the case. Instead, the statement seems to be relying, not on the art, but on the conclusions about the term "removably" made earlier in the Office Action. The concept referred to on page 6 does not appear to have foundation in the cited references, and in any case the applicant requests a more reasonable view of the term "removably" as argued above.

Applicant respectfully submits that the claims as presented are novel and unobviousness over the art of record, and ask the Board to reverse the finding of the Office Action of November 23, 2007, and to allow claims 1 to 7, and 10.

## **Claims Appendix**

1. An apparatus for taking up a succession of imbricated packaging bags carried by a pair of carrier tapes, said apparatus comprising:
  - a) two carrier tape winding spools positioned coaxially with one another; and
  - b) a differential gear unit positioned between said spools, said differential gear unit adapted to be, in use, removably connectable to a shaft of a bag loader whereby two carrier tapes can be wound up on said spools with equal tension.
2. An apparatus according to claim 1, wherein said spools each have a recess in a surface which faces the other spool and wherein said differential gear unit is positioned in said recesses.
3. An apparatus according to claim 1, wherein each of said spools is integrally formed with a bevel gear coaxial with said spool.
4. An apparatus according to claim 3, wherein said differential gear unit comprises a core and at least one pinion gear attached to said core and positioned to mesh with each bevel gear.
5. An apparatus according to claim 4 wherein said core comprises a mating hole for mating with the shaft of a bag loader.
6. An apparatus according to claim 1, wherein said spools and differential gear unit are positioned in a cassette housing.
7. An apparatus according to claim 1, wherein said differential gear unit is removably connectable to said shaft without the use of tools.

10. A method of loading a bag train on a bag loader, comprising:
  - a) providing a bag train incorporating a succession of imbricated packaging bags on two supply tapes from which they are to be removed during the loading operation, the supply tapes having lead ends equipped with two tape-winding spools with a differential gear unit positioned coaxially between the spools;
  - b) removably connecting the differential gear unit to a shaft of said bag loader; and
  - c) driving said spools to wind up said tapes on said spools with equal tension to bring each of the imbricated bags successively to a loading position where each bag is loaded and separated from the tapes.

**Evidence Appendix**

No evidence described in 37 CFR §41.37(ix) was submitted by applicants or entered by the Examiner.

**Related Proceedings Appendix**

There are no other appeals, interferences or judicial proceedings known to applicant , applicant's legal representative, or Assignee which may be related to, directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.